IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 100 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

KRISHNAKESHAV LABORATORIES LTD

Appearance:

1. INCOME TAX REFERENCE No. 100 of 1994
MR BB NAIK with MR MANISH R BHATT for Petitioner No. 1
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 18/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following question has been referred for the opinion of this Court in respect of assessment year 1984-85 :-

"Whether, the Appellate Tribunal is right in law and on facts in directing the Income tax Officer to exclude the amount of house rent allowance and reimbursement of entertainment expenses while computing the amount of disallowable expenditure out of Directors remuneration under Section 40(c)?"

2. We have heard Mr BB Naik, learned counsel for the revenue. Though served, none appears for the respondent-assessee.

3. As far as the amount of house rent allowance is concerned, Mr Naik for the revenue fairly points out that the controversy is concluded in favour of the assessee and against the revenue as per the decision of the Apex Court in CIT vs. Mafatlal Gangabhai & Co. (P) Ltd., (1996) 219 ITR 644 laying down that the cash payments by an assessee to his/its employees do not fall within the ambit of Section 40(a)(v) or Section 40A(5)(a)(ii) of the Income-tax Act, 1961. We accordingly answer this part of the question in the affirmative i.e. in favour of the assessee and against the revenue.

Coming to the reimbursement of entertainment expenses, for want of adequate particulars on record and in view of the smallness of the amount involved, we decline to answer this part of the question.

4. The reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-